IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.272 of 1997 with RFAs No.259, 261, 269, 271 & 277 of 1997.

Reserved on: May 10, 2007.

Decided on: June 11, 2007

***For title please see overleaf*:**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

***Whether approved for reporting?*[1]**

For the Appellants:	**Mr.M.L.Chauhan, Addl. A.G.**
For the Respondents:	**Mr.I.D.Bali, Sr.Advocate with Mr.Virender Bali, Advocate.**

Kuldip Singh, Judge

This order shall dispose of RFA Nos.272, 259, 261, 269, 271 and 277 of 1997 by a common judgment as all of them have arisen from common award dated 16.11.1996 passed by learned District Judge, Shimla.

2. The brief facts are that State of Himachal Pradesh acquired land in all the six cases for construction of *Kathang · Solang* road in village *Saskir,* Tehsil Jubbal, District Shimla. The notification under Section 4 of the Land Acquisition Act, 1894 (for short "the Act") was issued on 9.4.1992 but it was published in the Official Gazette on 16.5.1992. The Land Acquisition Collector assessed the market value of the acquired land and announced the

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

award on 23.8.1993. The respondents herein filed reference petitions under Section 18 of the Act on the ground that market value of their land was much more than what has been assessed by the Collector. In land reference case No.7-S/4 of 1995 (RFA No.272 of 1997) it has been further alleged that market value of apple trees which were standing on the acquired land has also not been assessed correctly. On these grounds, the respondents herein submitted for enhancement of compensation.

3. The appellants contested the claim on the ground that market value of the acquired land has been correctly assessed by the Collector and the respondents are not entitled to enhancement of compensation. The learned District Judge vide impugned award enhanced the compensation as follows:-

Sr.No.	***Petition No. & title of the petition.***	***Amount awarded by LAC***	***Amount awarded by the Court***	***Net Amount of enhanced compensation***
1.	7-S/4 of 1995, Roop Singh vs. LAC	3630.88	44,000	40,369.12 Say 40,369
2.	5-S/4 of 1995, Moti Ram vs. LAC	581.68	8000	7418.32 Say 7418
3.	6-S/4 of 1995, Gulab Singh vs. LAC	907.72	11,000	10,092.28 Say 10,092
4.	8-S/4 of 1995, Dhan Singh vs. LAC	6096.32	79,000	72,903.68 Say 72,904
5.	9-S/4 of 1995, Sunder Singh vs. LAC	929.94	33,000	32,070.06 Say 32,070

6.	11-S/4 of 1995, Suni Ram vs. LAC	638.04	9,000	8361.96 Say 8362

In addition to aforesaid amounts of enhanced compensation, the respondents were awarded solatium at the rate of 30% on the aforesaid amounts of enhanced compensation, additional compensation under 23(1-A) of the Act at the rate of 6% per annum from 1.6.1982 to 29.4.1982, thereafter at the rate of 12% per annum with effect from 30.4.1982 to 23.8.1993, interest at the rate of 4% per annum from 1.6.1980 to 29.4.1982 and thereafter at the rate of 9% per annum for the period from 30.4.1982 to 29.4.1983, further interest at the rate of 15% per annum with effect from 30.4.1983 till the aforesaid amounts of enhanced compensation are paid or deposited by the appellants.

4. The appellants are aggrieved by the impugned award and they have filed the above appeals.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned Additional Advocate General has submitted that the learned District Judge has erred in enhancing the compensation and has wrongly determined the market value of the land at the rate of Rs.1000/- per biswa. He has submitted that no case for enhancement of the compensation was made out by the respondents. The interest at wrong rate for various periods has been wrongly awarded by learned District Judge.

7. On the contrary, learned Senior counsel for the respondents has supported the impugned award and has submitted that the learned District Judge has rightly appreciated the material on record and has rightly determined the market value of land at the rate of Rs.1000/- per biswa and the rate of interest for various periods has also been correctly awarded.

8. The sale deed Ext.PA dated 15.5.1992 is of 5 biswas of land for a consideration of Rs.5000/- in village Saskir. The land covered by sale deed Ext.PA is *Ghasni.* The vendee of sale deed Ext.PA Laik Ram has been examined as PW-10 who has stated that he had purchased 5 biswas from Budhi Singh for a consideration of Rs.5000/-. He has denied that the sale deed Ext.PA was executed in order to help the respondents and he had not paid the consideration amount of Rs.5000/-. The other sale deed Ext.PB dated 15.5.1992 is of 4 biswas of *Bakhal Awal* land sold by Roop Singh in village Saskir to Subhash Chand for a consideration of Rs.4000/-. In order to prove sale deed Ext.PB Kewal Ram, father of vendee Subhash Chand, appeared as PW-9. He has stated that his son Subhash Chand has purchased land vide sale deed Ext.PB for construction of a house. He has further deposed that in the year 1992 the market value of the land in village Saskir was Rs.20,000/- per bigha. In cross examination, he has denied that land covered by Ext.PB has been purchased by Subhash Chand in order to help Roop Singh one of the respondents for getting more compensation.

9. The appellants have produced RW-1 Mast Ram, Patwari who has stated that the compensation has been paid to the respondents on the basis of one year average sale price of the land in village Sainj which is adjoining to village Saskir where the land was acquired. He has placed on record a copy of one year average sale price of land Ext.R-1. In cross examination, he has stated that he has not prepared the original of Ext.R-1 nor he could tell if sale deeds of mutations on the basis of which Ext.R-1 was prepared were taken into consideration for calculating average sale price. He could not tell if the market value of the acquired land was more than the average sale price of the land in village Sainj.

10. The learned Additional Advocate General has submitted that sale deeds Ext.PA and Ext.PB are with respect to the small areas, therefore, these sale deeds cannot be taken into consideration for determining the market value of the acquired land. He has further raised the contention that both these sale deeds are after the notification dated 9.4.1992 under Section 4 of the Act and, therefore, these cannot be taken into consideration. The appellants have not placed any sale deed on record to show what was the market value at the time of notification under Section 4. The respondents have placed on record sale deeds Ext.PA and Ext.PB and on the basis of these sale deeds the market value of the land in village Saskir at the relevant time comes to Rs.1000/- per biswa. The average price of the land brought on record by appellants vide

Ext.R-1 is of no help to the appellants. RW-1 Mast Ram Patwari who produced Ext.R-1 has admitted that this document was not prepared by him and he could not say that sale deeds were considered for calculating the average sale price of the land mentioned in Ext.R-1. In these circumstances, Ext.R-1 cannot be relied for determining the market value of the acquired land. There is no other evidence except for copies of sale deeds Ext.PA and PB which have been rightly relied by learned District Judge in determining the market value of the acquired land at the time of notification under Section 4 of the Act.

11. The objection of learned Additional Advocate General that these sale deeds Ext.PA and Ext.PB are after the notification under Section 4 of the Act is also of no significance. It is settled law that sale deeds executed after notification under Section 4 can be relied for determining the market value of the acquired land if those sale deeds have proximity to the date of notification under Section 4 and are bonafide transactions and have not been executed in order to escalate the value of the acquired land. In ***Mehta Ravindrarai Ajitrai (Deceased) Through his heirs and LRs & Ors. Versus State of Gujarat, (1989) 4 SCC 250,*** it has been held that sale deed in respect of land executed after about five months after the publication of notification under Section 4 can fairly be regarded as reasonably proximate to the acquisition in absence of any evidence to show that there was any speculative or sharp

rise in prices after acquisition. In the present case, notification under Section 4 though was issued on 9.4.1992 but it was published in *Rajpatra* on 16.5.1992. Thus, on 15.5.1992 on the date of execution of sale deeds Ext.PA and Ext.PB except for formal issuance of notification under Section 4 on 9.4.1992 there was no publication of the notification. There is no evidence on record that after the notification under Section 4 there was any speculation or sharp rise in prices adjacent to the acquired land. In the facts and circumstances, the learned District Judge has rightly relied sale deeds Ext.PA and Ext.PB for determining the market value of the acquired land.

12. The learned Additional Advocate General has submitted that interest has been wrongly awarded to the respondents from the date of possession prior to notification under Section 4 of the Act. He has submitted that the respondents are entitled to interest under the Act only from the date of notification under Section 4 even if possession has been taken earlier. He has relied on ***(2004) 4 SCC 79, R.L. JAIN (D) BY LRS. Vs. DDA AND OTHERS***. In this case, the Hon'ble Supreme Court in para-12 has held as follows:-

> *„The expression „the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid*

or deposited‰ should not be read in isolation divorced from its context. The words „such compensation‰ and „so taking possession‰ are important and have to be given meaning in the light of other provisions of the Act. „ Such compensation‰ would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification under Section 4(1) and other amounts like statutory sum under sub-section (1-A) and solatium under sub· section (2) of Section 23. The heading of Part II of the Act is „Acquisition‰ and there is a sub-heading „Taking Possession‰ which contains Sections 16 and 17 of the Act. The words „so taking possession‰ would therefore mean taking possession in accordance with Section 16 or 17 of the Act. These are the only two sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly, the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification under Section 4(1) it

would not be in accordance with Section 16 or 17 and will be without any authority of law and consequently cannot be recognized for the purposes of the Act. For parity of reasons the words „from the date on which he took possession of the land‰occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Section 16 or 17 of the Act. The words „so taking possession‰ can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification under Section 4(1) of the Act which is dehors the provisions of the Act‰

13. In ***2003 (1) Shim. L.C. 474, State of H.P. and another vs. Kalawati*** and others, a Division Bench on this Court has held that interest is payable for the land acquired only from the date of notification under Section 4 of the Act and not prior to it. However, the learned counsel for the respondents has submitted that the learned District Judge has rightly awarded interest from the date of possession.

14. In the present case, the notification under Section 4 of the Act for acquiring the land was published on 16.5.1992, therefore, in view of ***R.L.Jain (Supra)*** *and* ***State of H.P. vs. Kalawati (supra)****,* the respondents / claimants are entitled to interest at the rate of 9% for one year from 16.5.1992 and at the

rate of 15% from 16.5.1993 onwards till the payment is paid or deposited in the Court. It is held that on the enhanced compensation interest is payable to respondents at the rate of 9% w.e.f. 16.5.1992 and at the rate of 15% w.e.f. 16.5.1993 till it is paid or deposited in the Court. The impugned award on the point of interest is accordingly modified.

15. The result of above discussion is that RFA Nos.272, 259, 261, 269, 271 and 277 of 1997 are partly allowed and the impugned award in each appeal is modified. The respondents are held entitled to following amounts of enhanced compensation:-

Sr.No	***No. & name of petition***	***Amount of enhanced Compensation***
1.	7-S/4 of 1995, Roop Singh vs. LAC RFA No.272/97	Rs.40,396/-
2.	5-S/4 of 1995, Moti Ram vs. LAC RFA No.269/97	Rs.7,418/-
3.	6-S/4 of 1995, Gulab Singh vs. LAC RFA No.259/97	Rs.10,092/-
4.	8-S/4 of 1995, Dhan Singh vs. LAC RFA No.277/97	Rs.72,904/-
5.	9-S/4 of 1995, Sunder Singh vs. LAC RFA No.271/97	Rs.32,070/-
6.	11-S/4 of 1995, Suni Ram vs. LAC RFA No.261/97	Rs.8,362/-

In addition to above amount of enhanced compensation, the respondents shall be entitled to additional compensation under Section 23(1-A), solatium at the rate of 30% and interest on additional compensation at the rate of 9% for one year w.e.f. 16.5.1992 and at the rate of 15% from 16.5.1993 onwards till the payment is made or deposited in the Court. No costs.

June 11, 2007 *(soni)*

(Kuldip Singh)
Judge.

1.	***RFA No.272 of 1997*:**		
	LAC & Anr.	**Velrsus**	***Roop Singh & Anr*.**
2.	***RFA No.259 of 1997:***		
	LAC & Anr.	**Versus**	***Gulab Singh***
3.	***RFA No.261 of 1997:***		
	LAC & Anr.	**Versus**	***Suni Ram & Anr*.**
4.	***RFA No.269 of 1997*:**		
	LAC & Ors.	**Versus**	***Moti Ram***
5.	***RFA No.271 of 1997*:**		
	LAC & Anr.	**Versus**	***Sunder Singh & Anr*.**
6.	***RFA No.277 of 1997:***		
	LAC & Anr.	**Versus**	***Dhan Singh & Ors.***

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